

**UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW HAMPSHIRE**

Chad Evans

v.

Civil No. 08-cv-105-JD

Warden, New Hampshire State Prison

**O R D E R**

Chad Evans has filed a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, challenging the constitutionality of his state court conviction and confinement (document no. 1). Also filed is a Motion to Stay Processing of Habeas Petition and Toll Limitations Period (document no. 3), which is hereby granted.

Evans asserts that he is proceeding in state court to exhaust state court remedies with regard to certain unexhausted claims to be raised in his federal petition. Given the statute of limitations concerns under the Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. § 2254, he has filed the instant mixed petition in order to preserve his exhausted claim. Because Evans has elected to proceed in state court, I order the federal proceedings stayed and the petition held in abeyance

pending his resolution of state court remedies. Once he has exhausted state court remedies, he must request this Court to lift the stay and preliminarily review his federal petition.

Evans must commence the state court proceedings within thirty (30) days of the date of this order. Accordingly, I will order the proceedings stayed and the petition held in abeyance, pending his complete exhaustion of state remedies. The stay will be issued under the following two conditions:

1. Evans is ordered to contact this Court every 90 days, beginning from the date of entry of this order, and inform the court of the status and pendency of his state court proceedings, if any, and the disposition of any appeal or related matter.
2. Within 30 days following any ruling and/or notification by the New Hampshire Supreme Court on the claims at issue, and the exhaustion of such claims, Evans must notify this Court of the ruling and submit all briefs or other pleadings filed in the state court proceedings; he must also file a request with this Court, stating that his state court matter has been disposed of and that he wishes to terminate the stay and have this Court further consider his petition.

Failure to comply with either condition may result in

dismissal of the petition without prejudice.

**SO ORDERED.**

  
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James R. Muirhead  
United States Magistrate Judge

Date: May 6, 2008

cc: David M. Rothstein, Esq.